


Entered - 05/19/99 - sb
CL00L0290 - DIANNE C. MITCHELL

CLAIM OF: **DAVE REISEMAN,**
through his attorney,
Eric J. Frisch
720 Candler Building
127 Peachtree Street, NE
Atlanta, Georgia 30303

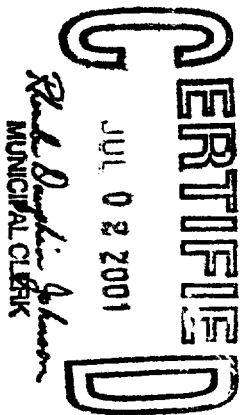
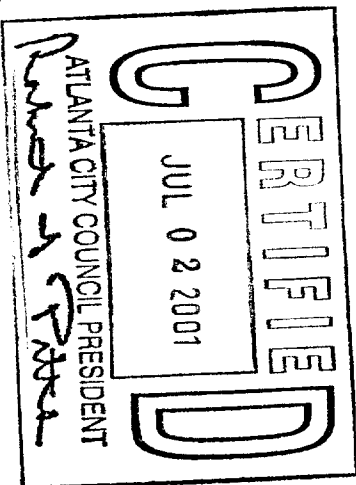
01- R-0939

For damages alleged to have been sustained as a result of a personal injury due to stepping into an open water meter on December 4, 1999 at 3057 Peachtree Road, NE.

THIS ADVERSED REPORT IS APPROVED

BY: 
ROBERT N. GODFREY
DEPUTY CITY ATTORNEY

ADVERSED BY
CITY COUNCIL JUL 02 2001



ADVERSE REPORT

PUBLIC SAFETY &
LEGAL ADMINISTRATION COMMITTEE

DATE: 6/26/01

CHAIR: C. T. Murt

James D. Wiley

Robert N. Godfrey

W. R. G.



**CITY OF ATLANTA
OFFICE OF MUNICIPAL CLERK**

**RHONDA DAUPHIN JOHNSON, CMC
MUNICIPAL CLERK**

**55 TRINITY AVENUE, S.W.
SECOND FLOOR, EAST
SUITE 2700
ATLANTA, GEORGIA 30335
(404) 330-6033
FAX (404) 658-6103**

July 2, 2001

Attorney Eric J. Frisch
720 Candler Building
127 Peachtree Street, N E
Atlanta, Georgia 30303

01-R-0939

RE: Dave Reiseman

Dear Attorney Frisch:

I sincerely regret that your client has been adversely affected by the circumstances raised in his/her claim for damages against the City of Atlanta. Your time and patience in this matter has been greatly appreciated.

However, I must notify you that the Atlanta City Council Adopted an Adverse Report on your client's claim at its regular meeting on July 2, 2001. In consultation with the City's Law Department, who conducted an investigation of the situation, the Council has determined that the City cannot accept responsibility for this matter and therefore cannot pay this claim.

If you desire any further information, please contact the **City Attorney's Office/Claims Division** at (404) 330-6400.

Yours very truly,

Rhonda Dauphin Johnson, CMC
Municipal Clerk

cc: Claims Division/Law Department

DEPARTMENT OF LAW - CLAIM INVESTIGATION SUMMARY

Claim No. 00L0290

Date: June 12, 2001

Claimant /Victim DAVE REISEMAN
BY: (Atty) Eric J. Frisch
Address: 720 Candler Building, 127 Peachtree Street, NE, Atlanta, Georgia 30303
Subrogation: Claim for Property damage \$ Bodily Injury \$ not stated
Date of Notice: 12/04/99 Method: Written, proper X Improper
Conforms to Notice: O.C.G.A. §36-33-5 X Ante Litem (6 Mo.) X
Date of Occurrence 05/17/00 Place: 3057 Peachtree Road, NE
Department Division:
Employee involved Disciplinary Action:

NATURE OF CLAIM: The claimant alleges that he was injured when he stepped into an open water meter. The claim was forwarded to United Water Services Atlanta for handling and their insurance carrier, The Travelers, has settled this claim with the claimant.

INVESTIGATION:

Statements: City employee Claimant Others Written Oral
Pictures Diagrams Reports: Police Dept Report Other
Traffic citations issued: City Driver Claimant Driver
Citation disposition: City Driver Claimant Driver

BASIS OF RECOMMENDATION:

Function: Governmental Ministerial
Improper Notice More than Six Months Other Damages reasonable
City not involved X Offer rejected Compromise settlement
Repair/replacement by Ins. Co. Repair/replacement by City Forces
Claimant Negligent City Negligent Joint Claim Abandoned

Respectfully submitted,


INVESTIGATOR - DIANNE C. MITCHELL

RECOMMENDATION:

Pay \$ Adverse X Account charged: 1A01 2J01 2H01
Claims Manager: Concur/date 06-13-01
Committee Action: Council Action

MAYFIELD & COMMANDER, L.L.C.

ATTORNEYS AT LAW

720 CANDLER BUILDING
127 PEACHTREE STREET, N.E.
ATLANTA, GEORGIA 30303

PH: (404) 584-8002

FAX: (404) 584-7002

ENTERED - 5-19-00 - SB
00L0290 - DIANNE MITCHELL

W. SCOTT MAYFIELD
SCOTT C. COMMANDER
ERIC J. FRISCH

EMAIL: EFRISCH@MAYFIELDCOMMANDER.COM

May 15, 2000

**Via Certified Mail,
Return Receipt Requested**

Members of City Council, City of Atlanta
55 Trinity Avenue, S.W.
Atlanta, Georgia 30335

Re: **Ante Litem Notice of Claim of Dave Reiseman for Personal Injuries**

Dear Council Members:

Please be advised that this firm represents Mr. Dave Reiseman of 202 North Colonial Homes Circle, Atlanta, Georgia 30309 regarding his claim for damages against the City of Atlanta for negligent maintenance of a water meter and sidewalk and maintenance of a continuing nuisance. This letter shall serve as Mr. Reiseman's *ante litem* notice of his claim, under O.C.G.A. § 36-33-5. This letter includes a description of the incident, a copy of the police report, the names of the witnesses, and a brief description of Mr. Reiseman's injuries.

The incident occurred as follows. At or about 1:45 a.m. on Saturday, December 4, 1999, Dave Reiseman, Bill Underwood and Tito Flaque, were walking down the sidewalk along Peachtree Road in the Buckhead area of Atlanta. While he walked down the sidewalk, which was dimly lit, Dave stepped in a hole about six inches wide and about 1 and ½ feet deep, injuring his right leg. Dave screamed out to his friends in pain and Mr. Underwood and Mr. Flaque turned around to see what had happened. Dave pulled his leg out of the hole to find that he had stepped in a water meter hole filled with water. When he pulled his leg out of the hole, Dave saw that his pants were bloody.

Not knowing how seriously Dave was injured, Mr. Flaque called 911 using his cell phone. Two police officers – T. L. Castor and M. Cavalier - arrived shortly and investigated. Officer Castor wrote an incident report, which is attached hereto as Exhibit "A." The police officers noticed that Dave had visible bruising and was in pain. They then called an ambulance to take Dave to Piedmont Hospital.

The water meter hole that Dave stepped in was uncovered. True and correct copies of photographs taken of the water meter hole as it existed at the time of the incident are attached hereto as Exhibit "B." The two eyewitnesses, as well as the two police officers, observed that (1) the water meter hole was filled with muddy water, (2) the water meter hole was uncovered, (3) what appeared to be a makeshift cover was off to the side and (4) there were no warning signs or anything that would alert someone that this hole existed uncovered. The police officers called the City of Atlanta Water Department to warn them of the hole. The same police officers also noticed another uncovered water meter hole at 3041 Peachtree Street, just up the road from where this incident occurred.

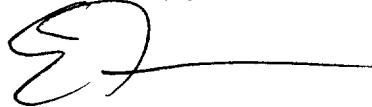
It appears, based on the facts above, that the City department responsible for maintaining the sidewalks in the Buckhead area failed to exercise ordinary degree of care with regard to this water meter, as well as the uncovered water meter discovered further up the road by the police officers. The fact that the police officers found another water meter hole just down the road from the one involved in this incident also speaks volumes. This fact shows that the condition of the water meters in Buckhead was an ongoing problem and a problem that could have been easily detected and remedied, before someone like Dave got hurt. Consequently, it appears that liability against the City for both negligent performance of a ministerial function, i.e. maintaining the sidewalks, as well as maintenance of a nuisance, is clear.

Unfortunately, Dave was injured when he stepped in the water meter hole. True and correct copies of the photographs of Dave's pants, which show the blood from his leg and which were taken at the time of the incident, are attached hereto as Exhibit "C." The Emergency Room physicians at Piedmont Hospital took x-rays, which showed that he did not break his leg in the incident. However, the Emergency Room physician did diagnose Dave with a serious contusion and sprain to his right leg. The Emergency Room Physicians allowed Dave to leave the hospital at 4:30 a.m. on crutches and instructed Dave to stay off of his leg for six weeks. Dave followed the doctor's instructions, which prevented Dave from, among other things, continuing his exercise routine. Also, Dave injured his back in the fall and has been treating with a chiropractor to relieve his pain. Notably, prior to this incident, Dave had no history of leg or back problems and maintained an active lifestyle. While Dave is only now able to exercise near the same level he had been at before this incident, there is no doubt that this fall has hampered his physical conditioning and his active lifestyle.

The City could have easily prevented Dave's injuries by properly maintaining the sidewalks and water meters in Buckhead. Because he was injured through no fault of his own but solely as the result of the City's negligence, Dave is making a claim for compensatory damages against the City. Dave's claim for damages includes, but is not limited to, his reasonable and necessary medical expenses and compensation for his pain and suffering. As Dave is still treating right now, the exact amount of his medical bills and time missed from work is not yet known.

Since this letter is Dave's *ante litum* notice of his claim, we encourage the City's Claims Division to speak with the witnesses, whose names are on the police report, as well as the reporting police officers. Dave is open to settling this claim without litigation after his doctor releases him at maximum medical improvement. As such, we are sending a copy of this letter to the City Law Department, Claims Division. If you need any information from us, please do not hesitate to call.

Respectfully yours,

A handwritten signature in black ink, consisting of a stylized 'E' followed by a horizontal line.

Eric J. Frisch

Enclosure

cc: City of Atlanta Law Department, Claims Division
Dave Reiseman

01- R -0939

RCS# 2964
7/02/01
2:13 PM

Atlanta City Council

Regular Session

CONSENT

Pages 1 through 11

ADOPT

YEAS: 13
NAYS: 0
ABSTENTIONS: 0
NOT VOTING: 2
EXCUSED: 0
ABSENT 1

SEE ATTACHED LISTING OF ITEMS
ADOPTED/ADVERSED ON
CONSENT AGENDA

Y McCarty	NV Dorsey	Y Moore	Y Thomas
Y Starnes	Y Woolard	Y Martin	B Emmons
Y Bond	Y Morris	Y Maddox	Y Alexander
Y Winslow	Y Muller	Y Boazman	NV Pitts

ITEM (S) REMOVED FROM
CONSENT AGENDA
01-O-0819

CONSENT

07/02/01 Council Meeting

**ITEMS ADOPTED ON
CONSENT AGENDA**

1. 01-O-0869
2. 01-O-0965
3. 01-O-0969
4. 01-O-0977
5. 01-O-0857
6. 01-O-0911
7. 01-O-0968
8. 01-O-0920
9. 00-R-1625
10. 01-R-0929
11. 01-R-0931
12. 01-R-0932
13. 01-R-0989
14. 01-R-0993
15. 01-R-0957
16. 01-R-0926
17. 01-R-0982
18. 01-R-0923
19. 01-R-0956
20. 01-R-0963
21. 01-R-0975
22. 01-R-1001
23. 01-R-0933
24. 01-R-0934
25. 01-R-0935

**ITEMS ADVERSED
ON CONSENT AGENDA**

26. 01-R-0936
 27. 01-R-0937
 28. 01-R-0938
 29. 01-R-0939
 30. 01-R-0940
 31. 01-R-0941
 32. 01-R-0942
 33. 01-R-0943
 34. 01-R-0944
 35. 01-R-0945
 36. 01-R-0946
 37. 01-R-0947
 38. 01-R-0948
 39. 01-R-0949
 40. 01-R-0950
 41. 01-R-0951
 42. 01-R-0952
 43. 01-R-0953
 44. 01-R-0954
 45. 01-R-0955
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